

for double rent for that period was subsequently amended by agreement to a claim for single rent the fact remains that the cause of action for any rent after the 1st August, 1949, was at any rate in part the notice to quit calling on the defendant to give up vacant possession on the 31st July, 1949. The cause of action for rent from the 1st August, 1949 till 31st August, 1950 in Civil Suit No. 104 of 1950 did not depend on any notice to quit. Therefore I hold that the plaintiff is not precluded from claiming rent for that period.

The third prayer is a claim for rent from the 1st September, 1950, till vacant possession is given. The cause of action on this claim depends, at any rate, partly on the notice to quit from the 31st August, 1950, and is not the same cause of action as the claim for double rent from the 1st August, 1949, made in Civil Suit No. 78 of 1949.

In these circumstances I order a new trial in the Sessions Court at Kuala Lumpur on the issues as to what rent, if any, is due to the plaintiff from the 1st August, 1949 to the 31st August, 1950, and as to whether the plaintiff is entitled to an order for ejectment and as to whether he is entitled to rent from the 1st September, 1950 till the defendant delivers up vacant possession of the premises to the plaintiff. It follows that the appeal is allowed, except in so far as plaintiff's claim is for any rent alleged to be due prior to the 1st August, 1949, and I do order that the respondent pay the appellant the costs of this appeal. The costs of the trial in the Sessions Court will follow the result of the new trial.

Retrial ordered.

THE RUBBER SUPERVISION LICENSING FOR THE DISTRICT OF BENTONG, PAHANG v. TAN ENG SEONG.

[Court of Appeal (Foster Sutton, C.J., Abbott and Wilson, JJ.) February 8, 1951]

[F.M. — Civil Appeal No. 39 of 1950]

Rubber Supervision Enactment, 1937, s. 7(i) — Whether it is incumbent upon Board to hear a party before exercising its powers under the Enactment — Duty of the Board to furnish reasons for its decision.

The facts of this case are fully set out in the Judgment of Taylor, J. reported in (1950) M.L.J. at p. 226.

Held, on Appeal (1) that the right of a person, conferred by section 7(iii), to be heard by the Board only arises after it has exercised its discretion under section 7(i) of the Rubber Supervision Enactment, 1937, since

the licensee is not "affected" until the Board has taken a positive act under the powers conferred upon it by the sub-section; (2) that the Board is an executive body and that when exercising its direction under section 7(i), it is performing a purely an executive function, but when a person affected has elected to be heard by the Board under section 7(iii), the Board's functions in relation to the hearing become quasi-judicial and the Board in such circumstances should inform the person affected of the reasons which led it to cancel his licence.

APPEAL from the judgment of Taylor, J. reported in (1950) M.L.J. 226.

C. M. Sheridan (Federal Counsel) for the appellant.

A. J. Bostock-Hill for the respondent.

Foster Sutton, C.J. : — This is an appeal from a judgment of Taylor, J. and an Order made in pursuance thereof, under which the appellant Board is required to hear a party before exercising its powers under sub-section (i) of section 7 of the Rubber Supervision Enactment, 1937, and to give the respondent, to quote from the Order, "before or at the hearing a fair opportunity to know why it was proposed to cancel his licence and to correct or contradict any statements prejudicial to his continuing to hold such licence which may have been made".

On behalf of the appellant it was argued that Taylor, J. erred in holding that it is incumbent upon the Board to hear a party before exercising its powers under section 7(i) of the Enactment, and in requiring it to inform the respondent of its reasons for the cancellation of his licence.

On the first point the appellant's advocate argued that the right of a person, conferred by sub-section (iii) of section 7, to be heard by the Board only arises after it has exercised its discretion under sub-section (i) of the section. He submitted that must be the case in view of the fact that the right to be heard by the Board is only conferred upon "any person affected", and that a person cannot be said to have been affected until the Board has taken a positive act under the powers conferred upon it by the sub-section. After hearing the argument the respondent's advocate conceded the point and, in my opinion, he was right in so doing.

On the second point it was contended that, in exercising its powers under section 7(i), the Board have an absolute discretion, that its functions are at all times purely executive ones, and that it is not required to furnish its reasons for arriving at a decision to a person affected by it who wishes to exercise his right to be heard by the Board.

On behalf of the respondent it was argued, *inter alia*, that the legislature could not have intended to provide the empty right contended for by the appellant, that there is nothing in section 7 to support such conclusion, and that the right to be heard can only be effective if the person concerned is told by the Board what is alleged against him.

The legislation under review on this appeal confers a right to be heard, but is silent as to the procedure to be followed once a person has notified the Board of his desire to exercise that right. It seems to me that it would be wrong to assume that by its silence on the point the legislature intended to provide the doubtful remedy contended for by the appellant. In my opinion it is reasonable to assume that the intention was to provide an effective method whereby a person affected by a decision of the Board could represent his case and he cannot, in my view, do so effectively unless he is told what is alleged against him.

Sub-section (iii) of section 7 of the Enactment expressly provides that there shall be no appeal from a decision of the Board given under the powers conferred upon it by sub-section (i) of the section, but it goes on to say "but any such person shall, if he so desires, be heard by the Board either in person or by an advocate and solicitor of the Supreme Court".

I agree with the appellant's advocate that the Board is an executive body and that, when exercising its discretion under section 7(i), it is performing a purely executive function, but when a person affected has elected to be heard by the Board under sub-section (iii) of the section, I am of the opinion that the Board's functions in relation to the hearing become *quasi-judicial* ones.

For the reasons I have given I am of the opinion that an Order directing the Board to inform the the respondent of the reasons which led it to cancel his licence may properly be made. I, therefore, would dismiss this appeal and direct that a new Order be drawn up in conformity with this decision.

As the Board could not safely omit to appeal to this Court, and it has succeeded in one important particular, in my view, the respondent should only receive half the taxed costs on this appeal, which he would otherwise have received had he been wholly successful.

Abbott, J. : — I concur.

Wilson, J. : — I concur.

Order accordingly.

OOI PHEE CHENG v. KOK YOON SAN.

[Court of Appeal (Foster Sutton, C.J., Thomson and Wilson, JJ.) April 10, 1951]

[K.L. — Civil Appeal No. 48 of 1950]

Appeal — Court of Appeal — Jurisdiction of — Court of Appeal Rules 1948, rr. 7 and 11.

This appeal, notice of which was filed on 20th November, 1950, was against the decision of Taylor, J. dated 13th November, 1950. When it came on for hearing the preliminary point was taken by the respondent, who was the defendant in the original proceedings, that the decision of 13th November, 1950 was not capable of being appealed against. With this contention the Court agreed and ordered that the appeal be struck out and intimated at the same time that their Lordships would give their reasons in due course. The appeal was heard on 13th February, 1951.

APPEAL from the judgment of Taylor, J. reported in (1950) M.L.J. 187

W. G. W. Hastings for the appellant.

H. T. Ong for the respondent.

The judgment of the Court was delivered by :—

Thomson, J. : — This appeal, notice of which was filed on 20th November, 1950, was against a decision of Taylor, J., dated 13th November, 1950. When it came on for hearing the preliminary point was taken by the respondent, who was the defendant in the original proceedings, that that decision of 13th November, 1950, was not capable of being appealed against. We were of the opinion that that objection was well-founded and on 13th February, 1951, we allowed it and ordered that the appeal be struck out intimating at the same time that we would give our reasons for this course at a later stage.

In order to make clear the question in issue it will be desirable to set out the course of the litigation between the parties in some detail.

The plaintiff's claim was based on two loans amounting to \$50,000 Japanese currency made by him towards the end of the Japanese occupation to one Lee Tuck Onn, now deceased, of whose will the defendant is the executor. In respect of these loans the plaintiff claimed \$50,000 Malayan currency. The defence was in effect that there was no liability in respect of the alleged loans or that, if there were liability, the amount due was less than \$50,000 either because some process of revaluation should be applied to the amount of \$50,000 Japanese currency originally said to be lent or by virtue of the Usurious Loans Enactment (Cap. 63). On these pleadings there were three possible decisions. Judgment could be given for the plaintiff for the full amount claimed; or judgment could be given for the defendant; or yet again judgment could be given for